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From: Engelman, Alexa
Sent: Wed 1/7/2015 5:38:03 PM
Subject: RE: Bakersfield California story on Clean Water Action report

There was also an InsideEPA story on the report, but with more focus on HQ's July memo than R9's oversight work in CA.

~Alexa

EPA Urged To Overhaul Aquifer Exemptions To Improve Water Protection

Posted: January 06, 2015

Environmentalists are urging EPA to overhaul its policy on granting so-called aquifer exemptions -- waivers from Safe Drinking Water Act (SDWA) permitting for certain underground injections -- in order to address what they claim are flaws in the policy that leave drinking water supplies vulnerable to contamination from the injections.

"The Aquifer Exemption program allows injection directly into once protected aquifers and essentially 'writes off' potential groundwater sources," says [a Jan. 6 report](#) from the advocacy groups Clean Water Action and Clean Water Fund. In what they call a "first-ever look" at the aquifer program, they call on EPA to make policy changes including revising its criteria for such exemptions and reviewing state-led permit programs.

The report cites recent examples in California and Texas of problems with how the waivers are implemented and the risks they pose to water supplies. "In light of recent developments in California and new understanding of how the program is implemented, scrutiny of the Aquifer Exemption program is warranted," the report says.

The report also cites [a July 24 memo](#) issued by Office of Ground Water and Drinking Water Director Peter Grevatt to EPA regional water directors, which highlights the need for "a more consistent and predictable process" for reviewing aquifer exemption requests. The memo outlines recommended steps EPA's 10 regions and states with primacy to issue SDWA underground injection control permits should follow when assessing such requests.

In the new report, the environmentalists point to language in the memo which says there are "other technical and policy issues associated with aquifer exemptions that are not addressed by this memorandum," and the environmental groups' report says, "The nature of these 'technical and policy' issues is still unknown."

One advocate involved in drafting the report says the memo acknowledges the need for greater clarification on the process for granting aquifer exemptions and adds it is "encouraging that EPA is paying attention."

To ensure greater clarity on the permitting exemption program, the groups are urging EPA to reassess both its definition of underground source of drinking water (USDW) -- which protects water containing up to 10,000 milligrams of total dissolved solids (TDS) -- and its criteria for allowing aquifer exemptions, and to "update regulations and guidance to reflect modern environmental challenges, water demands and technical advances."

Some have long argued that EPA should revise its USDW definition to reflect that future technologies may allow even water with high TDS content to be treated to the point where it is suitable as drinking water. The environmentalist suggests that EPA might consider "tightening that one up" in reviewing the criteria.

Additionally, the environmentalists in their report urge EPA to develop a national inventory of all current and past aquifer exemptions, investigate whether all current USDWs are being adequately protected and document injection activity in currently exempted aquifers, including whether exemptions were granted for "unconventional extraction" activities such as hydraulic fracturing or coalbed methane production.

Aquifer Exemptions

The groups also ask EPA to launch an inquiry into whether permitting primacy approval under SDWA section 1425, which offers a more flexible legal standard for obtaining primacy for overseeing Class II wells that govern oil and gas wastewater disposal, has contributed to problems with aquifer exemptions.

SDWA generally prohibits waste disposal, mining, energy production or other activities which involve injection from occurring within USDWs, and requires permits for such underground injection activities to ensure USDWs are adequately protected to reduce risk to water supplies.

But EPA in a 1980 rulemaking established regulatory criteria for granting exemptions under SDWA for instances where an aquifer, which may otherwise be considered a USDW, does not currently serve as a source of drinking water and cannot do so in the future.

While states with primacy over their UIC programs craft the parameters of such exemptions, EPA -- usually through its regional offices -- makes the final determination on whether to approve decisions concerning exempted aquifers. Such waivers have been historically been routinely developed and issued by states and approved by EPA without much pushback, but in recent years, the agency has appeared to take a more vigorous approach.

For example, earlier this year EPA in response to litigation voluntarily remanded its decision approving the Texas Commission on Environmental Quality's exemption allowing uranium mining in Goliad County, TX, withdrawing approval for part of the relevant formation and therefore narrowing the scope of the waiver.

And in California, EPA launched a review of the [state's UIC programs](#) to ensure they align with SDWA ahead of the state finalizing its draft rules for hydraulic fracturing and other oil and gas well stimulation practices, in particular on whether the state allowed underground injection to occur in USDWs due to recordkeeping issues and confusion over the regulatory definition of USDW.

EPA Memo

EPA's July 24 memo notes that the agency has approved scores of aquifer exemptions. It says, "There are some aquifer exemption requests, however, that have proven to be considerably more complex to review," and suggests steps regional directors should take to ensure clarity in approving such exemptions.

"Typically, these have involved situations where the proposed exempted area is located adjacent to an underground source of drinking water (USDW) that is currently in use, or where the potential future use of the USDW is unclear," the memo says.

The memo instructs regional offices to distribute to states within its jurisdiction an attached "checklist" of criteria that must be present for exemption to be granted and says regional directors should document their review and analysis of the information in the checklist in a decision memo when considering applications for exemptions.

"In the case of aquifer exemption requests that are expected to be complex, EPA Regions are encouraged to

schedule a discussion with the state UIC program managers as early in the process as possible," the memo says.

The memo also urges directors to elevate "significant disagreements" on exemption requests to senior primacy managers rather than "allowing them to persist at the staff level for extended periods of time," but stresses that such disputes should be resolved at the regional level, though EPA headquarters can offer assistance on specific decisions. -- *Bridget DiCosmo* (bdicosmo@iwpnews.com)

Related News: [Energy](#)

From: Keener, Bill

Sent: Wednesday, January 07, 2015 9:25 AM

To: Diamond, Jane; Quast, Sylvia

Cc: Engelman, Alexa; Rao, Kate; Zito, Kelly; Skadowski, Suzanne; Mogharabi, Nahal; Maier, Brent; Montgomery, Michael; Albright, David

Subject: Bakersfield California story on Clean Water Action report

Not a bad story by John Cox in today's Bakersfield Californian, although he does make an error in the last line by missing the fact that in Region 9's Dec 22 letter to the state, we set a compliance deadline 2 years out (not this February 15).

<http://www.bakersfieldcalifornian.com/business/kern-gusher/x23120647/New-report-calls-for-better-oversight-of-oil-injection-wells>

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